

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

KT EQUIPMENT (INTERNATIONAL), INC.,)
)
Plaintiff/Counter-Defendant,)
)
vs.) Civil No.: 08-2004-ML/P
)
)
BUCKEYE TECHNOLOGIES INC., BKI)
HOLDING CORPORATION, and BUCKEYE)
MT. HOLLY LLC)
)
Defendants/Counter-Plaintiffs.)
)

**ORDER DENYING WITHOUT PREJUDICE DEFENDANTS' MOTION TO COMPEL THE
DEPOSITION OF MICHAEL MLOTKOWSKI**

Before the court by order of reference is defendants' Motion to Compel the Deposition of Michael Mlotkowski, filed November 20, 2008 (D.E. 77). On December 19, 2008, the court held a telephonic hearing on the motion. In the motion, defendants seek an order from the court compelling Mlotkowski, who is trial counsel for plaintiff, to appear for a deposition and to respond to questions relating to communications he had with agents of the defendants during the patent prosecution at issue. A party seeking the deposition of trial counsel must show that (1) the information sought is relevant and non-privileged; (2) the information is crucial to the preparation of the case; and (3) there are no other means available to obtain the information. Shelton v. American Motors Corp., 805 F.2d 1323, 1327 (8th Cir. 1986); see also Nationwide Mut. Insur. Co. v. Home Insur. Co., 278 F.3d 621, 628 (6th Cir. 2001).

The court finds that, at this time, defendants have not sufficiently demonstrated that there are no other reasonable means available to obtain the information. Specifically, at the hearing, the court was informed that the parties have not yet completed the depositions of Robert Sullivan and Adrian Battison, two key agents of the defendants who communicated with Mlotkowski during the patent prosecution. The court finds that, at minimum, defendants should complete these two depositions before seeking to depose plaintiff's trial counsel, as it may be the case that those two depositions - coupled with discovery requests tailored to Mlotkowski's communications - might render a deposition of Mlotkowski unnecessary. Therefore, the motion is DENIED without prejudice. Defendants may renew their motion after completing the depositions of Sullivan and Battison.

IT IS SO ORDERED.

s/ Tu M. Pham

TU M. PHAM

United States Magistrate Judge

December 22, 2008

Date